

**BOISE, FRIDAY, NOVEMBER 14, 2008 AT 8:50 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**DENNIS W. WHEELER,**

**Petitioner-Appellant,**

**v.**

**IDAHO DEPARTMENT OF HEALTH AND  
WELFARE,**

**Respondent.**

**Docket No. 34426**

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. D. Duff McKee, District Judge.

Vernon K. Smith, Jr., Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

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This case requires the Court to consider the constitutionality of Idaho's Family Law License Suspensions Act (FLLSA), Idaho Code §§ 7-1401 to -1417. On September 25, 2005, Respondent Idaho Department of Health and Welfare (Department) instituted administrative proceedings under the FLLSA to suspend Appellant Dennis N. Wheeler's driver's license for failing to pay child support. According to the Department's records, Wheeler owed in excess of \$20,900.00 for his child support obligations for three children under three separate court orders, all of which were entered before the FLLSA became effective. After being served with notice, Wheeler hired private counsel and requested a hearing to contest his license suspension.

The hearing was held on December 14, 2005. Although Wheeler was afforded the opportunity to challenge the Department's findings and/or present evidence to establish "good cause" as to why his license should not be suspended, Wheeler chose to do neither. Instead, Wheeler requested the opportunity to submit briefing regarding specific legal challenges to the FLLSA itself and his request was granted.

On January 9, 2006, Wheeler filed a motion to dismiss, in which he raised various challenges to the FLLSA. Wheeler also questioned the Department's restrictive interpretation of the term "good cause" as defined under rule 16.03.03.604 of the Idaho Administrative Procedures Act (IDAPA). However, the hearing officer determined that pursuant to IDAPA 16.05.03.131, he did not have the authority to invalidate the FLLSA or the Department's administrative rules. Since the Department had established that Wheeler owed the child support and Wheeler had failed to present any evidence demonstrating "good cause" otherwise, the hearing officer issued a preliminary order granting the Department's request to suspend Wheeler's driver's license.

Wheeler appealed to the Director of the Department. On June 8, 2006, the Department affirmed the hearing officer's decision and entered a final order to suspend Wheeler's driver's license. The Department also determined that questioning the Department's authority to suspend drivers' licenses under the FLLSA was beyond the scope of an administrative proceeding.

Wheeler then sought judicial review of the Department's final order. After evaluating Wheeler's challenges to both the FLLSA and the Department's administrative rules, the district court determined that the Department had the authority to suspend Wheeler's driver's license. As such, the district court affirmed the Department's ruling.

This Court granted Wheeler's petition for review. On appeal, Wheeler raises various challenges the FLLSA itself, arguing: 1) a driver's license is an exempt "property interest" under the FLLSA; 2) the Department's interpretation of "good cause," as the term is used under the FLLSA, is too restrictive; 3) the hearing officer is not vested with the proper authority under IDAPA 16.05.03.131; 4) the FLLSA is void for vagueness; and 5) a judicial proceeding, rather than an administrative hearing, is the proper forum for enforcement of a court order to pay child support under the FLLSA. Wheeler also raises issues specific to the facts of his case, arguing the FLLSA was applied to his child support orders ex post facto, and that the Department improperly instituted license suspension proceedings against him under the FLLSA.

**BOISE, FRIDAY, NOVEMBER 14, 2008 AT 10:00 A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**CITY OF MCCALL, a municipal** )  
**corporation,** )  
**Plaintiff-Appellant,** )  
 )  
**v.** )  
 )  
**SUSAN E. BUXTON, MOORE, SMITH,** )  
**BUXTON & TURKE, CHARTERED, a** )  
**professional service corporation, WILLIAM** )  
**A. MCCURDY and BRASSEY,** )  
**WETHERELL, CRAWFORD & GARRETT,** )  
**a limited liability partnership,** )  
**Defendants-Respondents.** )  
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**Docket No. 34609**

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Ellis, Brown & Sheils, Chtd., and Strother Law Office, Boise, for Appellant.

Hawley Troxell Ennis & Hawley LLP, Boise, for Respondents Susan E. Buxton and Moore, Smith, Buxton & Turke, Chartered.

Elam & Burke, P.A., Boise, for Respondents William A. McCurdy and Brassey, Wetherell, Crawford & Garrett, LLP.

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The City of McCall appeals from the district court's order awarding summary judgment to Susan E. Buxton, and the Moore, Smith, Buxton & Turke law firm, and William A. McCurdy and the Brassey, Wetherell, Crawford & Garrett firm. The City alleges the Defendant firms negligently advised the City that St. Clair Contractors, Inc. was in breach of a contract for the construction of a 277,000 gallon wastewater storage lagoon and that St. Clair should be terminated on that account. The City was sued in Idaho federal district court by St. Clair and Employers Insurance of Wausau, the issuer of St. Clair's performance bond, for payment on the project. On May 4, 2004, a jury awarded Wausau and St. Clair \$4,955,096 against the Plaintiff, finding the Plaintiff had committed a material breach of the contract by terminating St. Clair.

The City of McCall filed a legal malpractice action against the Defendant attorneys on May 3, 2006. Holding that the City was damaged when it began incurring attorney fees in the underlying federal litigation, the district court granted the Defendants' motions for summary judgment on the basis that the City's claims were barred by the applicable statute of limitations.

The district court also held that the doctrine of equitable estoppel did not toll the statutory time period in this case, and awarded costs and reasonable attorney fees to all Defendants.

The City argues on appeal that the complaint was filed timely as required by Idaho Code § 5-219(4). The City argues in the alternative that the district court erred in holding the doctrine of equitable estoppel did not toll the statutory time period in this case. The City also disputes the award of attorney fees under I.C. § 12-120(3), arguing that the fact that the underlying claim was a commercial matter does not transform this malpractice claim into a commercial matter.